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5 UNITED STATES DISTRICT COURT  
6 NORTHERN DISTRICT OF CALIFORNIA  
7

8 STEVEN DEAN PARKS,

No. C-13-2489 EMC (pr)

9 Plaintiff,

10 v.

**ORDER TO SHOW CAUSE WHY  
ACTION SHOULD NOT BE DISMISSED  
AS TIME-BARRED**

11 HAMLIT, Warden; *et al.*,

12 Defendants.  
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15 **I. INTRODUCTION**

16 Plaintiff, an inmate currently incarcerated at San Quentin State Prison, filed this *pro se*  
17 prisoner's civil rights action under 42 U.S.C. § 1983. His complaint complains of events and  
18 omissions that occurred in 2001. Specifically, he alleges that the then-warden of the Correctional  
19 Training Facility in Soledad “injected [him] with a syringe with a color red looking fluid” while  
20 Plaintiff was held down by an unknown uniformed officer, and Plaintiff thereafter became severely  
21 ill. Docket # 1 at 5. The Court will require Plaintiff to address the apparent untimeliness of his claim  
22 before considering whether the action should proceed any further.

23 **II. DISCUSSION**

24 A federal court must engage in a preliminary screening of any case in which a prisoner seeks  
25 redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. §  
26 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims  
27 which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek  
28 monetary relief from a defendant who is immune from such relief. *See id.* at § 1915A(b)(1),(2). *Pro*

1 se pleadings must be liberally construed. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699  
2 (9th Cir. 1990).

3 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a right  
4 secured by the Constitution or laws of the United States was violated, and (2) that the violation was  
5 committed by a person acting under the color of state law. *See West v. Atkins*, 487 U.S. 42, 48  
6 (1988).

7 Section 1983 does not contain its own limitations period, so the court looks to the limitations  
8 period of the forum state's statute of limitations for personal injury torts. *See Elliott v. City of Union*  
9 *City*, 25 F.3d 800, 802 (9th Cir. 1994). California's statute of limitations period for personal injury  
10 torts is now two years, and the statute of limitations period for § 1983 claims is two years. *See*  
11 *Maldonado v. Harris*, 370 F.3d 945, 954 (9th Cir. 2004); Cal. Civ. Proc. Code § 335.1; *Elliott*, 25  
12 F.3d at 802. It is federal law, however, that determines when a cause of action accrues and the  
13 statute of limitations begins to run in a § 1983 action. *Wallace v. Kato*, 549 U.S. 384, 388 (2007);  
14 *Elliott*, 25 F.3d at 801-02. Under federal law, a claim generally accrues when the plaintiff knows or  
15 has reason to know of the injury which is the basis of the action. *See Elliott*, 25 F.3d at 802. The  
16 statute of limitations period generally begins when a plaintiff has knowledge of the "critical facts" of  
17 his injury, which are "that he has been hurt and who has inflicted the injury." *United States v.*  
18 *Kubrick*, 444 U.S. 111, 122 (1979).

19 Incarceration of the plaintiff is a disability that may toll the statute for a maximum of two  
20 years, but only for a plaintiff who is in prison "for a term less than for life" and is under the  
21 disability at the time the cause of action accrues. *See* Cal. Civ. Proc. Code § 352.1.

22 The limitations period may be subject to equitable tolling. Under California law, equitable  
23 tolling "'reliev[es] plaintiff from the bar of a limitations statute when, possessing several legal  
24 remedies he, reasonably and in good faith, pursues one designed to lessen the extent of his injuries  
25 or damage.'" *Cervantes v. City of San Diego*, 5 F.3d 1273, 1275 (9th Cir. 1993) (quoting *Addison v.*  
26 *California*, 21 Cal. 3d 313, 317 (1978)). Thus, in an appropriate case, the statute of limitations  
27 might be tolled for time spent pursuing a remedy in another forum before filing the claim in federal  
28 court.

1 Although the statute of limitations is an affirmative defense that normally may not be raised  
2 by a court sua sponte, it may be grounds for sua sponte dismissal of an *in forma pauperis* complaint  
3 where the defense is complete and obvious from the face of the pleadings or the court's own records.  
4 *See Franklin v. Murphy*, 745 F.2d 1221, 1228-30 (9th Cir. 1984). That is the situation here: the  
5 defense appears complete and obvious from the face of the complaint because this action was filed  
6 more than a dozen years after the acts and omissions alleged in the complaint occurred.

7 Plaintiff must file a response to this order, showing cause why the action should not be  
8 dismissed as time-barred. Of course, Plaintiff is not limited to arguing only equitable tolling – he  
9 may submit any argument he has to show that the statute of limitations does not bar this action.

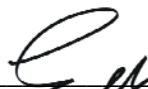
10 Part of Plaintiff's complaint was handwritten and part was typed. The handwritten  
11 description of the claim was extremely difficult to read because Plaintiff squished the words and  
12 lines together. The Court accepts handwritten as well as typed documents from *pro se* prisoners, but  
13 the Court must be able to read whatever has been filed. In all further filings, Plaintiff must be  
14 certain that any handwritten filing is legible.

### 15 III. CONCLUSION

16 The complaint appears to be time-barred. Plaintiff must file a written response no later than  
17 **January 17, 2014** showing cause why this action should not be dismissed as barred by the statute of  
18 limitations. Failure to file the response by the deadline will result in the dismissal of this action.

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20 IT IS SO ORDERED.

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22 Dated: December 11, 2013

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EDWARD M. CHEN  
United States District Judge